

1 CHARLSTON, REVICH & CHAMBERLIN LLP  
2 Jeffrey A. Charlston (State Bar No. 065427)  
3 Stephen P. Soskin (State Bar No. 101389)  
4 Thomas S. Flynn (State Bar No. 194231)  
5 1925 Century Park East, Suite 1250  
6 Los Angeles, California 90067  
7 Telephone: (310) 551-7000  
8 Facsimile: (310) 203-9321  
9 E-Mail Address: jcharlston@crcllp.com

10 Attorneys For Plaintiff  
11 Metropolitan Direct Property and  
12 Casualty Insurance Company

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

METROPOLITAN DIRECT PROPERTY  
AND CASUALTY INSURANCE  
COMPANY, a Rhode Island Corporation,

CASE NO.  
**C 07 5466**

COMPLAINT FOR  
DECLARATORY RELIEF

Plaintiff,  
v.  
MALCOLM M. SYNIGAL, SR., an  
individual, and ANGELA M. SYNIGAL,  
an individual, and DANITA KING, an  
individual,

**JL**

Defendants.

COMES NOW Metropolitan Direct Property and Casualty Insurance  
Company ("Metropolitan Direct"), and for its complaint alleges:

INTRODUCTION.

1. Metropolitan Direct seeks a judicial determination pursuant to 28 U.S.C.  
§2201 that coverage does not exist under a homeowners insurance policy issued by  
Metropolitan Direct to Malcolm M. Synigal, Sr. and Angela M. Synigal ("the

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METROPOLITAN DIRECT PROPERTY  
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COMPANY, a Rhode Island Corporation,

CASE NO.

Plaintiff,

COMPLAINT FOR  
DECLARATORY RELIEF

v.

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MALCOLM M. SYNIGAL, SR., an  
individual, and ANGELA M. SYNIGAL,  
an individual, and DANITA KING, an  
individual,

Defendants.

COMES NOW Metropolitan Direct Property and Casualty Insurance  
Company ("Metropolitan Direct"), and for its complaint alleges:

INTRODUCTION.

1. Metropolitan Direct seeks a judicial determination pursuant to 28 U.S.C.

§2201 that coverage does not exist under a homeowners insurance policy issued by  
Metropolitan Direct to Malcolm M. Synigal, Sr. and Angela M. Synigal ("the

1 Metropolitan Direct Homeowners Policy") for claims asserted by Danita King against  
2 them which arise out of the killing of Danita King's daughter, Nadawn Brown, by Marlin  
3 Synigal, the son of Malcolm M. Synigal, Sr. and Angela M. Synigal.

4

5           2. The Metropolitan Direct Homeowners Policy does not afford coverage  
6 for bodily injury, including death, which results from the criminal conduct of any insured,  
7 irrespective of whether the person engaging in such criminal conduct lacked the mental  
8 capacity to govern his conduct. Because Marlin Synigal qualifies as an "insured" person  
9 under the Metropolitan Direct Homeowners Policy, and because the death of Danita  
10 King's daughter was the result of criminal conduct, no coverage exists for Malcolm M.  
11 Synigal, Sr. or Angela M. Synigal under the Metropolitan Direct Homeowners Policy.

12

13           JURISDICTION AND VENUE

14

15           3. This Court has jurisdiction over the subject matter of this action pursuant  
16 to 28 U.S.C. § 1332(a)(1) in that the matter in controversy exceeds the sum of \$75,000,  
17 exclusive of interest and costs, and is between citizens of different states. The  
18 Metropolitan Direct Homeowners Policy has limits of liability of \$500,000, and the  
19 underlying claim for wrongful death exceeds the sum of \$75,000.

20

21           4. Pursuant to 28 U.S.C. § 1391(1), venue is appropriate in the San  
22 Francisco or Oakland Division of the Northern District of California because jurisdiction  
23 is founded upon diversity of citizenship, the defendants reside in Contra Costa County,  
24 which is within the San Francisco or Oakland Division of the Northern District of  
25 California, and the killing of Danita King's daughter by Marlin Synigal occurred in  
26 Contra Costa County which, as noted, is within the San Francisco or Oakland Division of  
27 the Northern District of California.

28           ///

1                   THE PARTIES.

2

3               5. At all times herein mentioned, plaintiff Metropolitan Direct was a

4 corporation organized and existing under the laws of the State of Rhode Island, with its

5 principal place of business located at 700 Quaker Lane, Warwick, Rhode Island, and a

6 citizen of the State of Rhode Island.

7

8               6. At all times herein mentioned, each of the defendants was an individual

9 residing in the City of Oakley, Contra Costa County, State of California, and a citizen of

10 the State of California.

11

12                   FACTUAL BACKGROUND.

13

14                   The Murder Of Nadawn Brown

15

16               7. On or about March 22, 2006, Nadawn Brown, the daughter of Danita

17 King, was killed by Marlin Synigal.

18

19               8. Marlin Synigal is the son of Malcolm M. Synigal, Sr., and Angela M.

20 Synigal.

21

22               9. At the time of Nadawn Brown's death, Marlin Synigal resided with his

23 parents, Malcolm M. Synigal, Sr., and Angela M. Synigal, at the family residence located

24 at 4585 E. Monte Court, Oakley, California 94561..

25

26               10. As a result of the killing of Nadawn Brown by Marlin Synigal, Marlin

27 Synigal has been charged with violation of California Penal Code §187 (Murder), and

28 violation of California Penal Code §459/460(a) (First Degree Residential Burglary).

1           11. As a further result of the killing of Nadawn Brown by Marlin Synigal,  
2 Marlin Synigal has been charged with violation of California Penal Code §12022(b)(1),  
3 use of a deadly/dangerous weapon in that it is alleged that Marlin Synigal used, in  
4 committing the death of Nadawn Brown, "a Dumbbell Bar, a deadly and dangerous  
5 weapon."

6

7           12. A true and correct copy of the Felony Complaint setting forth the  
8 charges against Marlin Synigal is attached hereto as Exhibit "A" and incorporated herein  
9 by this reference.

10

11           The Wrongful Death Claims Of Danita King

12

13           13. Danita King has brought an action against Malcolm M. Synigal, Sr.  
14 Angela M. Synigal, and Marlin Synigal to recover damages for the wrongful death of her  
15 daughter, Nadawn Brown.

16

17           14. Danita King contends that Malcolm M. Synigal and Angela M. Synigal  
18 are liable for the death of her daughter, Nadawn Brown, because they negligently failed to  
19 supervise their son, Marlin Synigal.

20

21           15. A true and correct copy of the complaint for wrongful death filed by  
22 Danita King against Malcolm M. Synigal, Sr. Angela M. Synigal, and Marlin Synigal is  
23 attached hereto as Exhibit "B" and incorporated herein by this reference.

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## The Metropolitan Direct Homeowners Policy

16. On or about March 22, 2007, Malcolm M. Synigal, Sr. and Angela M. Synigal were insured under a V.I.P. Plus Homeowners Insurance Policy bearing policy number 8993590640.

17. A true and correct copy of the Metropolitan Direct Homeowners Policy is attached hereto as Exhibit "C," and incorporated herein by this reference.

18. The first paragraph of the Metropolitan Direct Homeowners Policy provides, in pertinent part:

The terms of this policy impose joint obligations on all persons defined as “you”. This means that the responsibilities, acts and failures to act of a person defined as “you” will be binding upon another person defined as “you”.

19. The Metropolitan Direct Homeowners Policy affords various types of insurance coverage for the Synigal residence located at 4585 El Monte Court, Oakley, California, including coverage for damage to the dwelling located on the property, damage to private structures, and loss of personal property,

20. The Metropolitan Direct Homeowners Policy also affords the following coverage under the section entitled **COVERAGE F - PERSONAL LIABILITY:**

**We will pay all sums for bodily injury ... to others for which the law holds you responsible because of an occurrence. ...**

111

1                   21. The Metropolitan Direct Homeowners Policy contains the following  
2 definitions of "bodily injury":

4                   **"BODILY INJURY"** means any bodily harm, sickness or disease.

5                   This term includes required care, loss of services and death if it is  
6 a result of such bodily injury, sickness or disease.

7                   22. The Metropolitan Direct Homeowners Policy contains the following  
8 definitions of "occurrence":

11                   **"OCCURRENCE"** means an accident, including continuous or  
12 repeated exposure to substantially the same harmful conditions,  
13 resulting in **bodily injury** ... during the term of the policy.

15                   23. The Metropolitan Direct Homeowners Policy contains the following  
16 definitions of "you" and "your":

18                   **"YOU"** and **"YOUR"** mean:

20                   1. the person or persons named in the Declarations and if a  
21                   resident of the same household:  
22                   A. the spouse of such person or persons;  
23                   B. the relatives of either;  
24                   C. any other person under the age of twenty-one and in the  
25                   care of any of the above.

26                   ///

27                   ///

28                   ///

1           24. The Metropolitan Direct Homeowners Policy contains the following  
2 exclusion in that part of the policy entitled **SECTION II - LOSSES WE DO NOT COVER:**

3  
4           **UNDER COVERAGE F - PERSONAL LIABILITY ... WE DO NOT**  
5           **COVER**

6  
7           1. **bodily injury ..** which is reasonably expected or intended by  
8           **you** or which is the result of **your** intentional and criminal acts.  
9           This exclusion is applicable even if **you** lack the mental  
10           capacity, for whatever reason, to govern **your** conduct

11  
12           25. On March 22, 2006, Malcolm M. Synigal, Sr. and Angela M. Synigal  
13           came within the definition set forth in the Metropolitan Direct Homeowners Policy of  
14           “**you**” and “**your**” because they were both identified in the Metropolitan Direct  
15           Homeowners Policy as the “**Named Insured**.”

16  
17           26. On March 22, 2006, Marlin Synigal came within the definition set forth  
18           in the Metropolitan Direct Homeowners Policy of “**you**” and “**your**” because he was a  
19           relative of the “**Named Insured**,”

20  
21           27. On March 22, 2006, Marlin Synigal came within the definition set forth  
22           in the Metropolitan Direct Homeowners Policy of “**you**” and “**your**” because he was under  
23           the age of 21 and was in the care of the “**Named Insured**.”

24  
25           28. The killing of Nadawn Brown was an intentional and/or criminal act  
26           committed by Marlin Synigal.

27           ///

28           ///

1           29. The killing of Nadawn Brown comes within the scope of the exclusion  
2 quoted above in Paragraph 24 of this Complaint because it was an intentional or criminal  
3 act, and the exclusion applies whether or not Marlin Synigal had the mental capacity to  
4 govern his conduct.

5

6           30. The exclusion quoted above in Paragraph 24 of this Complaint applies  
7 to all parties coming within the definition in the Metropolitan Direct Homeowners Policy  
8 of "you" and/or "your."

9

10           FIRST CLAIM FOR RELIEF

11           (Declaratory Relief - No Coverage The Metropolitan  
12           Direct Homeowners Policy For The Wrongful Death Claims of Danita King)

13

14           31. Plaintiff refers to the foregoing paragraphs 1 through 30 and  
15 incorporates the same herein by this reference.

16

17           32. An actual controversy has arisen and now exists between plaintiff and  
18 defendants, and each of them, in that plaintiff contends, and is informed and believe that  
19 defendants deny, that no coverage exists under the Metropolitan Direct Homeowners  
20 Policy for the wrongful death claims asserted by Danita King against Malcolm M.  
21 Synigal, Sr. and Angela M. Synigal because the death of the daughter Danita King does  
22 not constitute an "occurrence," that is and "accident," as such terms is used and defined in  
23 the Metropolitan Direct Homeowners Policy.

24

25           33. Plaintiff seeks, and is entitled to obtain, a declaration that no coverage  
26 exists under the Metropolitan Direct Homeowners Policy for the wrongful death claims  
27 asserted by Danita King against Malcolm M. Synigal, Sr. and Angela M. Synigal because  
28 the death of the daughter Danita King does not constitute an "occurrence," that is and

1 "accident," as such terms is used and defined in the Metropolitan Direct Homeowners  
2 Policy.

3  
4 34. Plaintiff seeks, and are entitled to obtain, a declaration that because no  
5 coverage exists under the Metropolitan Direct Homeowners Policy for the wrongful death  
6 claims asserted by Danita King against Malcolm M. Synigal, Sr. and Angela M. Synigal,  
7 plaintiff owes no duties, whether for defense, indemnity or otherwise, to defendants, and  
8 each of them, or any of them.

9  
10 SECOND CLAIM FOR RELIEF

11 (Declaratory Relief - No Coverage The Metropolitan  
12 Direct Homeowners Policy For The Wrongful Death Claims of Danita King)

13  
14 35. Plaintiff refers to the foregoing paragraphs 1 through 30 and  
15 incorporates the same herein by this reference.

16  
17 36. An actual controversy has arisen and now exists between plaintiff and  
18 defendants, and each of them, in that plaintiff contends, and is informed and believe that  
19 defendants deny, that no coverage exists under the Metropolitan Direct Homeowners  
20 Policy for the wrongful death claims asserted by Danita King against Malcolm M.  
21 Synigal, Sr. and Angela M. Synigal because such claims come within the scope of the  
22 exclusion contained in the Metropolitan Direct Homeowners Policy which precludes  
23 coverage for an intentional or criminal act, even if the perpetrator lacked the mental  
24 capacity to control his actions.

25  
26 37. Plaintiff seeks, and is entitled to obtain, a declaration that no coverage  
27 exists under the Metropolitan Direct Homeowners Policy for the wrongful death claims  
28 asserted by Danita King against Malcolm M. Synigal, Sr. and Angela M. Synigal because

1 such claims come within the scope of the exclusion contained in the Metropolitan Direct  
2 Homeowners Policy which precludes coverage for an intentional or criminal act, even if  
3 the perpetrator lacked the mental capacity to control his actions.

4

5 38. Plaintiff seeks, and are entitled to obtain, a declaration that because no  
6 coverage exists under the Metropolitan Direct Homeowners Policy for the wrongful death  
7 claims asserted by Danita King against Malcolm M. Synigal, Sr. and Angela M. Synigal,  
8 plaintiff owes no duties, whether for defense, indemnity or otherwise, to defendants, and  
9 each of them, or any of them.

10

11 WHEREFORE, plaintiff prays for judgment against defendants, and each of  
12 them, as follows:

13

14 1. For a declaration that no coverage exists for the wrongful death claims  
15 asserted by Danita King against Malcolm M. Synigal, Sr. and Angela M.  
16 Synigal under the Metropolitan Direct Homeowners Policy;

17

18 2. For a declaration that Metropolitan Direct owes no duties, whether for  
19 defense, indemnity or otherwise, to defendants, and each of them, or any  
20 of them, in connection with the wrongful death claims asserted by Danita  
21 King against Malcolm M. Synigal, Sr. and Angela M. Synigal;

22

23 3. For plaintiff's costs of suit incurred herein; and

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1                   4. For such other and further relief as the Court deems  
2                   appropriate.  
3  
4                   Dated: October 23, 2007                   CHARLSTON, REVICH & CHAMBERLIN LLP  
5    JEFFREY A. CHARLSTON  
6    STEPHEN P. SOSKIN  
7  
8                   By Jeffrey A. Charlston  
9    Jeffrey A. Charlston  
10    Attorneys for Plaintiff  
11    Metropolitan Direct Property and  
12    Casualty Insurance Company  
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